

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
v.) Criminal No. 05-10016-RCL
)
MICHAEL MCDONALD,)
Defendant.)

MOTION FOR FINAL ORDER OF FORFEITURE

The United States of America, by its Attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, respectfully moves that this Court issue a Final Order of Forfeiture in the above-captioned case, pursuant Title 21, United States Code, Section 853, and Rule 32.2(b) of the Federal Rules of Criminal Procedure. A proposed Final Order of Forfeiture is submitted herewith. In support thereof, the United States sets forth the following:

1. On January 26, 2005, a federal grand jury sitting in the District of Massachusetts returned a four-count Indictment charging defendant Michael McDonald (the "Defendant") and others with Conspiracy to Import Cocaine, in violation of 21 U.S.C. § 963 (Count One), and Possession with Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Counts Three and Four)¹.

2. The Indictment also contained a forfeiture allegation pursuant to 21 U.S.C. § 853, which sought the forfeiture, as a

¹The Defendant was not charged in Count Two of the Indictment.

result of the offenses alleged in Counts One through Four of the Indictment, of any and all property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of any such violations.

3. On March 23, 2005, the United States submitted the United States' Bill of Particulars for Forfeiture of Assets (see Document No. 20), specifically giving notice that the United States would seek the forfeiture of the following property from the Defendant:

one 2000 Nissan Pathfinder, Vehicle Identification No. JN8AR07Y2YW423553, seized from Michael McDonald on or about November 24, 2004 (the "Nissan Pathfinder").

4. On February 16, 2007, the United States filed a one-count Superseding Information charging the Defendant with Conspiracy to commit a violation of 21 U.S.C. § 841(a)(1), that is, to Possess Cocaine with the Intent to Distribute, in violation of 18 U.S.C. § 371 (see Document No. 80). The Superseding Information also included a Forfeiture Allegation which sought the forfeiture of any and all property constituting, or derived from, any proceeds the Defendant obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of any such violation, pursuant to

21 U.S.C. § 853.

5. On March 15, 2007, the Defendant pled guilty to Count One of the Superseding Information, pursuant to a written plea agreement he signed on February 16, 2007 (see Document No. 82). In Section Nine of the written plea agreement, the Defendant agreed to forfeit any and all of his assets subject to forfeiture pursuant to 21 U.S.C. § 853 as a result of his guilty plea, including the Nissan Pathfinder. In the plea agreement, the Defendant admitted that the Nissan Pathfinder is subject to forfeiture on the grounds that it was used to facilitate the commission of the offense charged in Count One of the Superseding Information.

6. On June 18, 2007, a sentencing hearing was held and the Defendant was sentenced to 60 months incarceration, to be followed by a term of three years supervised release. In addition, the District Court ordered the Defendant to forfeit the Nissan Pathfinder to the United States.

7. Also on June 18, 2007, this Court issued a Preliminary Order of Forfeiture, pursuant to 21 U.S.C. § 853, and Rule 32.2 of the Federal Rules of Criminal Procedure, against the Defendant's interests in the Nissan Pathfinder (see Document No. 88).

8. On August 6, 2007, August 13, 2007, and August 20, 2007, a Notice of Order of Forfeiture was published in the Boston

Herald newspaper pursuant to 21 U.S.C. § 853(n) (see Document Number 92).

9. To date, no claims of interest in the Nissan Pathfinder have been filed with the Court and the time within which to do so has expired.

WHEREFORE, the United States respectfully requests that this Court enter a Final Order of Forfeiture against the Nissan Pathfinder in the form submitted herewith.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

BY: /s/ Kristina E. Barclay
DONALD L. CABELL
JEREMY M. STERNBERG
KRISTINA E. BARCLAY
Assistant U.S. Attorneys
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: January 31, 2008

CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion for Final Order of Forfeiture and the proposed Final Order of Forfeiture, filed through the Electronic Case Filing system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Kristina E. Barclay
Kristina E. Barclay
Assistant U.S. Attorney

Date: January 31, 2008

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DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
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v.) Criminal No. 05-10016-RCL
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FINAL ORDER OF FORFEITURE

LINDSAY, D.J.,

WHEREAS, on January 26, 2005, a federal grand jury sitting in the District of Massachusetts returned a four-count Indictment charging defendant Michael McDonald (the "Defendant") and others with Conspiracy to Import Cocaine, in violation of 21 U.S.C. § 963 (Count One), and Possession with Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Counts Three and Four);

WHEREAS, the Indictment also contained a forfeiture allegation pursuant to 21 U.S.C. § 853, which sought the forfeiture, as a result of the offenses alleged in Counts One through Four of the Indictment, of any and all property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of any such violations;

WHEREAS, on March 23, 2005, the United States submitted the United States' Bill of Particulars for Forfeiture of Assets,

specifically giving notice that the United States would seek the forfeiture of the following property from the Defendant:

one 2000 Nissan Pathfinder, Vehicle Identification No. JN8AR07Y2YW423553, seized from Michael McDonald on or about November 24, 2004 (the "Nissan Pathfinder");

WHEREAS, on February 16, 2007, the United States filed a one-count Superseding Information charging the Defendant with Conspiracy to commit a violation of 21 U.S.C. § 841(a)(1), that is, to Possess Cocaine with the Intent to Distribute, in violation of 18 U.S.C. § 371;

WHEREAS, the Superseding Information also included a Forfeiture Allegation which sought the forfeiture of any and all property constituting, or derived from, any proceeds the Defendant obtained, directly or indirectly, as a result of such offenses; and/or any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of any such violation, pursuant to 21 U.S.C. § 853;

WHEREAS, on March 15, 2007, the Defendant pled guilty to Count One of the Superseding Information, pursuant to a written plea agreement he signed on February 16, 2007;

WHEREAS, in Section Nine of the written plea agreement, the Defendant agreed to forfeit any and all of his assets subject to forfeiture, pursuant to 21 U.S.C. § 853 as a result of his guilty plea, including the Nissan Pathfinder, and the Defendant admitted that the Nissan Pathfinder is subject to forfeiture on the

grounds that it was used to facilitate the commission of the offense charged in Count One of the Superseding Information;

WHEREAS, on June 18, 2007, a sentencing hearing was held and the Defendant was sentenced to 60 months incarceration, to be followed by a term of three years supervised release, and in addition, the District Court ordered the Defendant to forfeit the Nissan Pathfinder to the United States;

WHEREAS, also on June 18, 2007, this Court issued a Preliminary Order of Forfeiture, pursuant to 21 U.S.C. § 853, and Rule 32.2 of the Federal Rules of Criminal Procedure, against the Defendant's interests in the Nissan Pathfinder;

WHEREAS, on August 6, 2007, August 13, 2007, and August 20, 2007, a Notice of Order of Forfeiture was published in the Boston Herald newspaper pursuant to 21 U.S.C. § 853(n); and

WHEREAS, to date, no claims of interest in the Nissan Pathfinder have been filed with the Court and the time within which to do so has expired.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The United States' Motion for a Final Order of Forfeiture is allowed.

2. The United States of America is now entitled to the forfeiture of all right, title or interest in the Nissan Pathfinder, and it is hereby forfeited to the United States of America pursuant to the provisions of 21 U.S.C. § 853.

3. All other parties, having any right, title, or interest in the Nissan Pathfinder, are hereby held in default.

4. The United States Department of Homeland Security, Bureau of Customs and Border Protection is hereby authorized to dispose of the Nissan Pathfinder in accordance with applicable law.

DONE AND ORDERED in Boston, Massachusetts, this _____ day of _____, 2008.

REGINALD C. LINDSAY
United States District Judge